

## CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer Makena Estates L.L.C.  
Address 3620 Baldwin Avenue, Suite 107, Makawao, Hawaii 96768  
Project Name(\*): Nā Hale O Mākena  
Address: 4955 Makena Keoneoi Road, Kihei, Hawaii 96753

Registration No. 4468

Effective date: August 16, 2001

Expiration date: September 16, 2002

### Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

**Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.**

**Expiration Date of Reports.** Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

### Type of Report:

- ☐ **PRELIMINARY:**  
(yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.
- ☐ **CONTINGENT FINAL:**  
(green) The developer has legally created a condominium and has filed information with the Commission for this report which **EXPIRES NINE (9) MONTHS** after the above effective date. Contingent Final public reports may not be extended or renewed.  
☐ No prior reports have been issued.  
☐ This report supersedes all prior public reports.
- ☒ **FINAL:**  
(white) The developer has legally created a condominium and has filed complete information with the Commission.  
☐ No prior reports have been issued.  
☒ This report supersedes all prior public reports.  
☐ This report must be read together with \_\_\_\_\_
- ☐ **SUPPLEMENTARY:**  
(pink) This report updates information contained in the:  
☐ Preliminary Public Report dated: \_\_\_\_\_  
☐ Final Public Report dated: \_\_\_\_\_  
☐ Supplementary Public Report dated: \_\_\_\_\_
- And ☐ Supersedes all prior public reports.  
☐ Must be read together with \_\_\_\_\_  
☐ This report reactivates the \_\_\_\_\_  
public report(s) which expired on \_\_\_\_\_

(\*) Exactly as named in the Declaration

*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.*

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

☒ [ X ] Required and attached to this report     ☐ [ ] Not Required-Disclosures covered in this report.  
as Exhibit "H".

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

☐ [ ] No prior reports have been issued by the developer.

☒ [ X ] Changes made are as follows:

1. Articles of Incorporation for Nā Hale O Mākena, incorporating the project condominium association as a Hawaii nonprofit corporation, were filed with the State of Hawaii Department of Commerce and Consumer Affairs on July 9, 2001.

2. Developer has entered into a Wastewater Servicing License Agreement dated July 20, 2001 and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 2724545 and also recorded in the Bureau of Conveyances as Document No. 2001-115824 with a neighboring landowner, Ulupalakua Ranch, Inc., for its connection to and use of the sewer pump station to be constructed on the Project property.

3. Developer has entered into a Grant dated June 25, 2001 recorded in the Bureau of Conveyances as Document No. 2001-115651 in favor of Maui Electric Company, Limited and Verizon Hawaii, Inc. granting a non-exclusive, perpetual right and easement for utility purposes.

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## **General Information On Condominiums**

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

## **Operation of the Condominium Project**

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

## I. PERSONS CONNECTED WITH THE PROJECT

Developer: Makena Estates L.L.C. Phone: (808) 573-1559  
Name\* (Business)  
3620 Baldwin Avenue, Suite 107  
Business Address  
Makawao, Hawaii 96768

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

Martin W. Quill - Manager Member; Ray Watt - Manager Member; and Paul Vogel - Manager Member.

Real Estate Broker\*: CBIP, Inc., dba Phone: (808) 875-7000  
Coldwell Banker Island Properties (Business)  
Name  
3860 Wailea Alanui, Suite 101  
Business Address  
Wailea, Hawaii 96753

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 871-2200  
Name (Business)  
80 Puunene Avenue  
Business Address  
Kahului, Hawaii 96732

General Contractor\*: Maryl Pacific Constructors, Inc. Phone: (808) 545-2920  
Name (Business)  
737 Bishop Street, Suite 1260  
Business Address  
Honolulu, Hawaii 96813

Condominium Managing Agent\*: Prudential Iwado Realty, Inc. Phone: (808) 877-7727  
Name (Business)  
296-A Alamaha Street  
Business Address  
Kahului, Hawaii 96732

Attorney for Developer: Robert E. Rowland Phone: (808) 871-8351  
Mancini, Rowland & Welch (Business)  
Name  
33 Lono Avenue, Suite 470  
Business Address  
Kahului, Hawaii 96732

\*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

## II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

☐ Proposed  
☒ Recorded - Bureau of Conveyances: Document No. 2000-166795  
Book \_\_\_\_\_ Page \_\_\_\_\_  
☐ Filed - Land Court Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]: First Amendment to Declaration of Condominium Property Regime of Nā Hale O Mākena and Condominium Map No. 3192 dated July 16, 2001 and recorded in the Bureau of Conveyances as Document No. 2001-115825.

- B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

☐ Proposed  
☒ Recorded - Bureau of Conveyances Condo Map No. 3192  
☐ Filed - Land Court Condo Map No. \_\_\_\_\_

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]: First Amendment to Declaration of Condominium Property Regime of Nā Hale O Mākena and Condominium Map No. 3192 dated July 16, 2001 and recorded in the Bureau of Conveyances as Document No. 2001-115825.

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

☐ Proposed  
☒ Recorded - Bureau of Conveyances: Document No. 2000-166796  
Book \_\_\_\_\_ Page \_\_\_\_\_  
☐ Filed - Land Court: Document No. \_\_\_\_\_

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]: First Amendment to the Bylaws of the Association of Apartment Owners of Nā Hale O Mākena dated June 18, 2001 and recorded in the Bureau of Conveyances as Document No. 2001-096485.

- D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

☐ Proposed      ☒ Adopted      ☐ Developer does not plan to adopt House Rules

- E. **Changes to Condominium Documents.** Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75% *	<u>75% **</u>
Bylaws	65%	<u>65%</u>
House Rules	<u>      </u>	<u>majority of Board of Directors</u>

\* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

\*\*Certain amendments require mortgagee approval. See Section 16 of the Declaration.

2. **Developer:**

☐ No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

☒ Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

Under Section 3.2 of the Deposit Receipt and Sales Contract, Developer reserves the right to change the condominium documents in any manner in Developer's discretion at any time before the contract becomes binding after the issuance of a Final Public Report. Under Section 3.3 of said contract, after the date of the Final Public Report, Developer may amend the documents in certain respects which will not materially and adversely affect the value or use of Buyer's apartment.

Under paragraph 16.1 of the Declaration, the Developer reserves the right to amend the Declaration, the Condominium Map and the By-Laws at any time prior to the first recording of a conveyance or transfer (other than for security) of an apartment and its appurtenances to a party who has not signed the Declaration.

Paragraph 16.1 of the Declaration also permits the Developer to amend the Declaration and the Condominium Map to file the "as-built" verified statement required by the Condominium Property Act at any time before or after the lease, sale or conveyance of any of the apartments.

Under paragraph 16.2 of the Declaration, the Developer reserves the right to amend the Declaration, Bylaws, and Condominium Map (if appropriate) to meet any requirement imposed by law, lenders, title insurers, or governmental agencies.

Developer may amend the Rules and Regulations in any manner prior to election of the first Board of Directors of the Project.



### III. THE CONDOMINIUM PROJECT

#### A. Interest to be Conveyed to Buyer:

- ☒ Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- ☐ Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for the lessee.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable: ☐ Monthly ☐ Quarterly  
☐ Semi-Annually ☐ Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per:  
☐ Month ☐ Year

#### For Sub-leaseholds:

- ☐ Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:  
☐ Canceled ☐ Foreclosed
- ☐ As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.
- ☐ Individual Apartments in Fee Simple: Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the buildings(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable: ☐ Monthly ☐ Quarterly  
☐ Semi-Annually ☐ Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per:  
☐ Month ☐ Year

☐ Other:

### **IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: 4955 Makena Keoneoi Road  
Kihei, Hawaii 96753

Tax Map Key (TMK): (2) 2-1-7:101

☐ Address ☐ TMK is expected to change because \_\_\_\_\_

Land Area: 6.180 ☐ square feet ☒ acre(s) Zoning: A-2 Apartment

Fee Owner: Makena Estates L.L.C.  
 Name  
3620 Baldwin Avenue, Suite 107  
 Address  
Makawao, Hawaii 96768

Lessor: n/a  
 Name  
 Address

C. **Buildings and Other Improvements:**

1. ☒ New Building(s) ☐ Conversion of Existing Building(s)  
☐ Both New Building(s) and Conversion
2. Number of Buildings: 6 Floors Per Building: 4 buildings will have 3 floors  
2 buildings will have 4 floors  
☒ Exhibit A contains further explanations.

3. **Principal Construction Material:**

☒ Concrete ☒ Hollow Tile ☒ Wood  
☒ Other Steel

4. **Uses Permitted by Zoning:**

	No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>		No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>
<input checked="" type="checkbox"/> Residential	<u>40</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other: _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?  
☒ Yes ☐ No

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

[ X] Pets: Section 10.7 of the Bylaws prohibits pets except for fish and other aquarium animals.

[ ] Number of Occupants: \_\_\_\_\_

[ X] Other: No commercial use, time sharing, rooming house uses, or rentals for less than 180 consecutive days are permitted (see Section 8(a) of the Declaration). No waterbeds or hot tubs/jacuzzis are allowed in the apartments except as installed by the Developer as part of the original Project construction.

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 1 in each building for a total of 6 Stairways: 2 in each building for a total of 12  
Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf) *</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
<u>A</u>	<u>8</u>	<u>3/2-1/2 ①</u>	<u>2116</u>	<u>206, 657</u>	<u>lanai, loft</u>
<u>B</u>	<u>4</u>	<u>2/2-1/2 ②</u>	<u>2088</u>	<u>206, 657</u>	<u>lanai, loft</u>
<u>C</u>	<u>10</u>	<u>3/2-1/2 ③</u>	<u>2116</u>	<u>206</u>	<u>lanai</u>
<u>D</u>	<u>6</u>	<u>2/2-1/2 ④</u>	<u>2088</u>	<u>206</u>	<u>lanai</u>
<u>E</u>	<u>6</u>	<u>3/2-1/2 ③</u>	<u>2049</u>	<u>206</u>	<u>lanai</u>
<u>F</u>	<u>2</u>	<u>3/2-1/2 ③</u>	<u>2116</u>	<u>206</u>	<u>lanai</u>
<u>G</u>	<u>4</u>	<u>2/2-1/2 ④</u>	<u>2088</u>	<u>206</u>	<u>lanai</u>

Total Number of Apartments: 40

① Option to change to 2/2-½.

② Option to change to 3/2-½.

③ Option to change to 2/2-½.

④ Option to change to 3/2-½.

**\*Net Living Area is the floor area at the apartment measured from the interior surface of the apartment perimeter walls.**

**Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.**

Boundaries of Each Apartment:

See Exhibit C.

Permitted Alterations to Apartments:

See Exhibit D.

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement. Developer has elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 89

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>TOTAL</u>
Assigned (for each unit)	<u>40</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>40</u>
Guest	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Unassigned	<u>      </u>	<u>40</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>40</u>
Extra for Purchase	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Other: <u>X</u>	<u>      </u>	<u>9</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>9</u>
Total Covered & Open:	<u>89</u>	<u>      </u>	<u>0</u>	<u>      </u>	<u>0</u>	<u>      </u>	<u>89</u>

Each apartment will have the exclusive use of at least 1 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

☐ Commercial parking garage permitted in condominium project.

☒ Exhibit B contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

☐ There are no recreational or common facilities.

☒ Swimming pool      ☒ Storage Area      ☐ Recreation Area  
with jacuzzi

☐ Laundry Area      ☐ Tennis Court      ☒ Trash/Enclosure(s)

☒ Other: (i) cabana with kitchen, workout area, lanai, and men's and women's restrooms;  
(ii) manager's living quarters; and (iii) elevators.

9. Compliance With Building Code and Municipal Regulations: Cost to Cure Violations

☒ There are no violations.      ☐ Violations will not be cured.

☐ Violations and cost to cure are listed below:      ☐ Violations will be cured by \_\_\_\_\_.  
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations. (For conversions of residential apartments in existence for at least five years):

N/A

11. Conformance to Present Zoning Code

- a. ☒ [ X] No variances to zoning code have been granted.  
☐ [ ] Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>    X    </u>	<u>          </u>	<u>          </u>
Structures	<u>    X    </u>	<u>          </u>	<u>          </u>
Lot	<u>    X    </u>	<u>          </u>	<u>          </u>

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

☒ [ X] described in Exhibit   E  .

☐ [ ] as follows:

2. **Limited Common Elements:** Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

☐ There are no limited common elements in this project.

☒ The limited common elements and the apartments which use them, as described in the Declaration, are:

☒ described in Exhibit F\*.

☐ as follows:

\*Note: Land areas referenced herein are not legally subdivided lots.

3. **Common Interest:** Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

☒ described in Exhibit B.

☐ as follows:

- E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit G describes the encumbrances against the title contained in the title report dated July 27, 2001 and issued by Title Guaranty of Hawaii, Inc.

**Blanket Liens:**

A blanket lien is an encumbrance (such as mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[ X] There are no blanket liens affecting title to the individual apartments.

However, it is anticipated a blanket lien construction loan will be placed against the property before and during construction of the project.

[ ] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conveyance</b></u>
Blanket lien construction loan is expected.	<p>Buyer may lose his or her apartment, but Buyer's deposit to be refunded, less any escrow cancellation fees.</p> <p>Buyer's interest under the Deposit Receipt and Sales Contract will be subordinate to the rights and interests of Developer's lender.</p>

**F. Construction Warranties:**

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

See Section 3 of Exhibit H (the Disclosure Abstract).

2. Appliances:

See Section 3 of Exhibit H (the Disclosure Abstract).



G. **Status of Construction and Date of Completion or Estimated Date of Completion:**

Construction estimated to commence in March or April 2001.

Construction estimated to be completed by December 31, 2002.

H. **Project Phases:**

The developer [ ] has [ X] has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

#### IV. CONDOMINIUM MANAGEMENT

- A. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

**Initial Condominium Managing Agent:** When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

☒ [ X ] not affiliated with the Developer      ☐ [ ] the Developer or Developer's affiliate.  
☐ [ ] self-managed by the Association      ☐ [ ] Other: \_\_\_\_\_  
of Apartment Owners

- B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit H (Disclosure Abstract) contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

- C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

☐ [ ] None    ☒ [ X ] Electricity ( X Common Elements only    \_\_\_ Common Elements & Apartments)  
☒ [ X ] Gas    ( \_\_\_ Common Elements only    X Common Elements & Apartments)  
☒ [ X ] Water    ☒ [ X ] Sewer    ☒ [ X ] Television Cable  
☐ [ ] Other \_\_\_\_\_

## V. MISCELLANEOUS

### A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

- ☐ Notice to Owner Occupants
- ☒ Specimen Sales Contract  
Exhibit I contains a summary of the pertinent provisions of the sales contract.
- ☒ Escrow Agreement dated July 27, 2000  
Exhibit J contains a summary of the pertinent provisions of the escrow agreement.
- ☐ Other \_\_\_\_\_

### B. Buyer's Right to Cancel Sales Contract:

#### 1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Contingent Final Report or Supplementary Report to a Contingent Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Contingent Final Public Report **OR** the Supplementary Public Report which has superseded the Contingent Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
  - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**

- C) One of the following has occurred:
- 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; AND
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other Subdivision Agreement (Three Lots or Less) dated November 4, 1994, Document No. 95-027759; Subdivision Agreement (Three Lots or Less) dated November 4, 1994, Document No. 95-027760; Unilateral Agreement dated November 23, 1998. Special Management Area Use Permit for the Makena Estates 40-Unit Resort Condominium Project and Related Improvements, TMK: 2-1-7:101, Makena, Maui, HI (SM1 2000/0020) Dated November 2, 2000.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P.O. Box 541, Honolulu, Hawaii 96809, at a nominal cost.

This Public Report is a part of Registration No. 4468 filed with the Real Estate Commission on July 28, 2000.

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[ ] YELLOW paper stock    [X] WHITE paper stock    [ ] PINK paper stock    [ ] GREEN paper stock

C. **Additional Information Not Covered Above**

1. The Project property is subject to the Special Management Area Rules and Regulations of the County of Maui. Special Management Area Permit No. SM1 2000/0020 and dated November 2, 2000, has been issued for the Project by the Maui County Planning Commission.

2. Hawaii has enacted a law requiring sex offenders to register with the Attorney General's office and allowing public access to relevant information regarding sex offenders. A sex offender must provide certain relevant information including the street name and zip code of the sex offender's current and future residence and place of employment. This information is available at the Hawaii Criminal Justice Data Center and at one or more designated police stations in each county. Neither developer, nor any real estate agent is required to obtain information regarding sex offenders.

- D. The developer declares subject to the penalties set forth in Section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

Makena Estates L.L.C.

Printed Name of Developer

By: Martin W. Quill  
Duly Authorized Signatory\*

August 13, 2001

Date

Martin W. Quill, Manager Member

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Maui

Planning Department, County of Maui

## EXHIBIT A

### DESCRIPTION AND LOCATION OF THE APARTMENTS AND BUILDINGS

1. Description of the Buildings: The Project consists of six (6) buildings: two (2) four (4) story buildings ("Type I") and four (4) three (3) story buildings ("Type II"). There are six (6) apartments in the Type II buildings, with two apartments on each floor, and eight (8) apartments in the Type I buildings with two apartments on each floor. The Type I buildings are designated Building B and Building C and the Type II buildings are designated Building A, Building D, Building E, and Building F. All buildings are constructed of concrete, steel, wood, glass and related materials.

2. Description of Apartments: The apartments are built according to seven (7) different floor plans within the Type I and Type II building configurations. The apartment types are identified as Type A, Type B, Type C, Type D, Type E, Type F, and Type G. The apartment types are more particularly described as follows:

#### Type A:

Type A apartments have three bedrooms, two and one-half bathrooms, a great room (living/dining/kitchen), and a loft area. Type A apartments also include a covered lanai, closets, hallways, and storage areas all as shown on the Condominium Map. Type A apartments are designated A-301, A-302, B-401, C-401, D-301, E-301, F-301, and D-302 as shown on the Condominium Map.

#### Type B:

Type B apartments have two bedrooms, two and one-half bathrooms, a great room (living/dining/kitchen), together with a loft area. Type B apartments also include a covered lanai, closets, hallways, and storage areas all as shown on the Condominium Map. Type B apartments are designated B-402, C-402, E-302 and F-302 as shown on the Condominium Map.

#### Type C, Type E, and Type F:

Type C, Type E, and Type F apartments have three bedrooms, two and one-half bathrooms, and a great room (living/dining/kitchen), together with a covered lanai, closets, hallways, and storage areas all as shown on the Condominium Map. Type C apartments are designated A-201, A-202, B-201, B-301, C-201, C-301, D 201, E-201, F-201 and D-202; Type E apartments are designated A-101, B-101, C-101,

D-101, E-101, and F-101; Type F apartments are designated A-102 and D-102; all as shown on the Condominium Map.

Type D and Type G:

Type D and Type G apartments have two bedrooms, two and one-half bathrooms, and a great room (living/dining/kitchen) together with a covered lanai, closets, hallways, and storage areas all as shown on the Condominium Map. Type D apartments are designated B-202, B-302, C-202, C-302, E-202 and F-202; Type G apartments are designated as B-102, C-102, E-102, and F-102, all as shown on the Condominium Map.

At the option of the Developer, the floor plans for any of the types of apartments described above may be altered by amendment to the Declaration and Condominium Map to convert: (i) a Type A apartment to a Type B apartment through eliminating bedroom 3 and enlarging bedroom 2 and bathroom 2 with related, additional changes; (ii) a Type B apartment to a Type A apartment through dividing bedroom 2 into two, separate bedrooms and making bathroom 2 smaller with related, additional changes; (iii) a Type C, Type E, or Type F apartment to a Type D or Type G apartment by making the same alterations described in subparagraph (i); and (iv) a Type D or Type G apartment to a Type C, Type E or Type F apartment by making the alterations described above in subparagraph (ii).



# EXHIBIT B

## APARTMENT NUMBERS, PARKING STALLS, NET LIVING FLOOR AREAS, OTHER FLOOR AREAS, AND COMMON INTERESTS

Apt. No.	Apt. Type <sup>1</sup>	Bldg. Type	Assigned Covered Parking Stall No.	Apartment Square Footage			Total Area	Common Interest
				Net Living Floor Area	Covered Lanai Area	Loft Area		
A-301	A	II	P09	2116	206	657	2979	3.0%
A-302	A	II	P10	2116	206	657	2979	3.0%
B-401	A	I	P15	2116	206	657	2979	3.0%
C-401	A	I	P31	2116	206	657	2979	3.0%
D-301	A	II	P45	2116	206	657	2979	3.0%
E-301	A	II	P57	2116	206	657	2979	3.0%
F-301	A	II	P73	2116	206	657	2979	3.0%
F-302	B	II	P74	2088	206	657	2951	3.0%
B-402	B	I	P16	2088	206	657	2951	3.0%
C-402	B	I	P30	2088	206	657	2979	3.0%
D-302	A	II	P46	2116	206	657	2951	3.0%
E-302	B	II	P58	2088	206	657	2951	3.0%
A-201	C	II	P11	2116	206		2322	2.575%
A-202	C	II	P12	2116	206		2322	2.575%
B-201	C	I	P19	2116	206		2322	2.575%
B-301	C	I	P17	2116	206		2322	2.575%
C-201	C	I	P43	2116	206		2322	2.575%
C-301	C	I	P32	2116	206		2322	2.575%
D-201	C	II	P47	2116	206		2322	2.575%
E-201	C	II	P59	2116	206		2322	2.575%
F-201	C	II	P72	2116	206		2322	2.575%
F-202	D	II	P75	2088	206		2294	2.575%
B-202	D	I	P20	2088	206		2294	2.575%
B-302	D	I	P18	2088	206		2294	2.575%
C-202	D	I	P42	2088	206		2294	2.575%
C-302	D	I	P44	2088	206		2294	2.575%
D-202	C	II	P48	2116	206		2322	2.575%
E-202	D	II	P60	2088	206		2294	2.575%
A-101	E	II	P13	2049	206		2255	1.9%
B-101	E	I	P21	2049	206		2255	1.9%
C-101	E	I	P41	2049	206		2255	1.9%
D-101	E	II	P49	2049	206		2255	1.9%
E-101	E	II	P61	2049	206		2255	1.9%
F-101	E	II	P71	2049	206		2255	1.9%
F-102	G	II	P70	2088	206		2294	1.9%
A-102	F	II	P14	2116	206		2322	1.9%
B-102	G	I	P22	2088	206		2294	1.9%
C-102	G	I	P40	2088	206		2294	1.9%
D-102	F	II	P50	2116	206		2322	1.9%
E-102	G	II	P62	2088	206		2294	1.9%
				Totals				100.0%

<sup>1</sup>Changes in Unit Mix. At any time prior to the Effective Date, the Seller may change the number of units or buildings in the Project, and prior to or after the Effective Date, the Seller may change the combination of unit types within one or more buildings and may rearrange the location of units and unit types within one or more buildings. See Section 3 of Exhibit A of the Sales Contract concerning the Seller's right to amend the condominium documents in this respect.

## EXHIBIT C

### BOUNDARIES OF APARTMENTS

Boundaries. Each Apartment consists of the space within the boundaries shown on the Condominium Map, which is enclosed by the perimeter walls and/or the imaginary vertical planes (where there is no perimeter wall), the floor, and the ceiling as shown on the Condominium Map.

What Is Included in Apartments. Each Apartment shall be deemed to include: (i) all the walls, partitions and components thereof which are not load-bearing within its perimeter walls, (ii) all non-loadbearing, non-structural interior components of the Apartment's perimeter and party walls, (iii) the interior decorated or finished surfaces of all walls, floors and ceilings, including floor coverings, (iv) all doors, door frames, windows, window frames and panels along the perimeters, (v) all fixtures originally installed in the Apartment, (vi) all pipes, plumbing, heat pumps, wiring, fixtures, outlets and switches which serve only that Apartment, (vii) any loft area within an Apartment, and (viii) the lanai of each Apartment.

What Is Not Included in Apartments. The Apartments shall not be deemed to include: (a) the loadbearing or structural components of the perimeter walls and all exterior components of perimeter walls, whether or not loadbearing or structural, including lanai railings, (b) all loadbearing or structural components of all interior walls and party walls, (c) the undecorated or unfinished surfaces of the floors and ceilings surrounding each Apartment, (d) any pipes, shafts, wires, conduits or other utility or service lines running through an Apartment which are utilized for or serve more than one Apartment or (e) the finished surfaces of the lanais (including adjacent exterior wall surfaces of the Apartment), which are visible from outside the Apartment and which the Association shall have the responsibility to maintain under Section 5.4 of the Declaration, the same being deemed common elements.

## EXHIBIT D

### PERMITTED ALTERATIONS OF APARTMENTS

1. Subject to the provisions of the Declaration and the Act, and except as otherwise provided in the Bylaws, no owner of an Apartment shall, without the prior written approval of the Board of Directors of the Association, make any structural alterations in or additions to his Apartment or make any alterations in (including painting, awnings, jalousies and screens) or additions to the exterior of his Apartment or to the Apartment's building or to the common elements.

2. Developer is offering buyers the option of purchasing Type A, Type B, Type C, Type D, Type E, Type F, and Type G Apartments as shown on the Condominium Map and briefly described in Exhibit A to this Public Report. During the construction of the Project and before final installation of the interior walls of a particular Apartment, a Buyer (and Developer with respect to any unsold units) will be expected to select between a Type A and Type B Apartment; and between a Type C, Type E or Type F Apartment and a Type D or Type G Apartment. If Buyer or Developer (with respect to any unsold units) exercise one of the foregoing options after the Declaration and Condominium Map have been recorded in the Bureau of Conveyances and a Final Public Report has been issued, then Developer shall amend and record the Declaration and Condominium Map and a Supplementary Public Report shall be issued.

3. Subject to the foregoing, an owner may make certain non-structural alterations and additions solely within his Apartment, at the owner's sole cost and expense, provided that such alterations or additions do not affect any other Apartment or other common elements or change the exterior or appearance of the Project, and provided, further, that any building permit required for such alterations or additions is first duly obtained and filed with the Board and the proposed alteration or addition will not adversely affect the insurance rating for the Apartment's building or the Project's insurance rating or premiums.

4. Article VIII of the Bylaws contains additional information regarding alterations to the Apartments, the common elements and the limited common elements.

## EXHIBIT E

### DESCRIPTION OF COMMON ELEMENTS

The common elements include all other elements of the Project not included within any Apartment, including but not limited to:

- (a) The land on which the condominium is located in fee simple;
- (b) The limited common elements (see Exhibit F to this Public Report);
- (c) All foundations, columns, girders, beams, supports, perimeter walls, load-bearing walls, roof structures (including all attic spaces, roof joists, sheathing and roofing materials), pumps, ducts, pipes, wires, conduits or other utility or service lines which are located outside the Apartment or which are utilized for or serve more than one Apartment, and generally all equipment, apparatus, installations and personal property existing for common use in the buildings or located on the condominium land;
- (d) All pipes, wires, ducts, conduits or other utility or service lines running through any Apartment which are utilized by or serve more than one Apartment;
- (e) All elevators, roads, driveways and other common ways, all parking spaces and areas, all landscaping, exterior irrigation systems, fences, lanai railings, gates, retaining walls, mailbox areas, trash areas, swimming pool, jacuzzi, and accessory equipment areas located on the condominium land or in any building;
- (f) The resident manager's living quarters and the cabana with kitchen, workout room, lanai, and men's and women's restrooms;
- (g) All distribution systems for water, sewer and utility services not located within any Apartment and not owned by the County of Maui or any public utility.

## EXHIBIT F

### DESCRIPTION OF LIMITED COMMON ELEMENTS

Certain of the common elements are hereby set aside and reserved for the exclusive use of certain of the Apartments, and such Apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements as follows:

(a) Each Apartment shall have one (1) assigned covered parking stall and a storage locker located immediately in front of the assigned covered stall.

(b) Each Apartment shall have one (1) assigned mailbox.

(c) Any other common element of the Property which is rationally related to only one Apartment shall be deemed a limited common element appurtenant to and for the exclusive use of such Apartment (but loft areas shall not be limited common elements).

## EXHIBIT G

### ENCUMBRANCES AGAINST TITLE

1. Real property taxes which may be due and owing. Reference is made to the Tax Assessor's Office, County of Maui.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Subdivision Agreement (Three Lots or Less) dated November 4, 1994, recorded in the said Bureau of Conveyances as Document No. 95-027759, between Edward Chang, Robyn Lehua Ponty, Jason Keone Pang, Janice P. Hachbarth, Ernest Chang, Gordon Chang, Gayle N. Morihara, Kenneth Chang, John K. Chang, Jr., Elizabeth Pearl Chang, Johnnie Dano, Johanna Thoene, Florence Gartrell, Elizabeth Chang, Helene Kellett Hart, Melvin Kellett, Esther M. Poplardo, Steven N. Chang, David K. Chang, Clifford Chang, Laverne Chang, Solomon Chang, Phillip Chang, Frank Chang, Samuel Malina, Jr., Louis Fernandez, III, Randolph Fernandez, Helaine Chock, and Patricia E. Chang, "The Owners", and the County of Maui, a body politic and corporate and a political subdivision of the State of Hawaii, "County".
4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Subdivision Agreement (Three Lots or Less) dated November 4, 1994, recorded in the said Bureau of Conveyances as Document No. 95-027760, between Edward Chang, Robyn Lehua Ponty, Jason Keone Pang, Janice P. Hachbarth, Ernest Chang, Gordon Chang, Gayle N. Morihara, Kenneth Chang, John K. Chang, Jr., Elizabeth Pearl Chang, Johnnie Dano, Johanna Thoene, Florence Gartrell, Elizabeth Chang, Helene Kellett Hart, Melvin Kellett, Esther M. Poplardo, Steven N. Chang, David K. Chang, Clifford Chang, Laverne Chang, Solomon Chang, Phillip Chang, Frank Chang, Samuel Malina, Jr., Louis Fernandez, III, Randolph Fernandez, Helaine Chock, and Patricia E. Chang, "The Owners", and the County of Maui, a body politic and corporate and a political subdivision of the State of Hawaii, "County".
5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Unilateral Agreement dated November 23, 1998, recorded in the said Bureau of Conveyances as Document No. 99-034542, by Malia Aina, Ltd.
6. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural,

religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Declaration of Condominium Property Regime for "Na Hale O Makena" condominium project dated November 20, 2000, recorded in said Bureau of Conveyances as Document No. 2000-166795, and covered by Condominium Map No. 3192 and any amendments thereto.

Said Declaration was amended by instrument dated July 16, 2001, recorded as Document No. 2001-115825.

8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in By-Laws of the Association of Apartment Owners dated November 20, 2000, recorded in said Bureau of Conveyances as Document No. 2000-166796.

Said By-Laws were amended by instrument dated June 18, 2001, recorded as Document No. 2001-096485.

9. Grant in favor of Maui Electric Company, Limited and Verizon Hawaii, Inc. dated June 25, 2001, recorded in said Bureau of Conveyances as Document No. 2001-115651, granting a non-exclusive, perpetual right and easement for utility purposes, as shown on the map attached thereto.

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Wastewater Servicing License Agreement dated July 20, 2001, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 2724545 and also recorded in said Bureau of Conveyances as Document No. 2001-115824, between Ulupalakua Ranch, Inc., a Hawaii corporation, and Makena Estates L.L.C., a Hawaii limited liability company.

11. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

12. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

END OF EXHIBIT G

CONDOMINIUM PUBLIC REPORT ON  
Nā Hale O Mākena

EXHIBIT H

DISCLOSURE ABSTRACT

August 13, 2001

1.   (a)   PROJECT:                   Nā Hale O Mākena  
                                      Makena Keoneoio Road  
                                      Makena, Hawaii 96753
- (b)   DEVELOPER:             Makena Estates L.L.C.  
                                      3620 Baldwin Avenue, Suite 107  
                                      Makawao, Hawaii 96768  
                                      Telephone: (808) 573-1559
- (c)   PROJECT MANAGER:     Prudential Iwado Realty, Inc.  
                                      296-A Alamaha Street  
                                      Kahului, Hawaii 96732  
                                      Telephone: (808) 877-7727
- (d)   REAL ESTATE BROKER:   CBIP, Inc., dba  
                                      Coldwell Banker Island Properties  
                                      3860 Wailea Alanui, Suite 101  
                                      Wailea, Hawaii 96753  
                                      Telephone: (808) 875-7000
2.   USE OF APARTMENTS:
- (a)   Number of Apartments ("Apartments") in Project for Residential Use: 40
- (b)   Proposed Number of Apartments in Project for Hotel Use: -0-
- (c)   Extent of Commercial or Other Nonresidential Development in Project: None
3.   WARRANTIES:
- Developer is referred to herein as "Seller".



a. Inspection. Inspection of Apartments for building defects and deficiencies will take place on dates and at times as determined by Seller upon completion of construction. Buyer will receive written notice of the date and time of the inspection of Buyer's Apartment prior to such inspection.

b. Limited Warranty by Seller and Procedure for Inspection. If Buyer cooperates in the inspection program to be instituted by Seller and Buyer's Apartment is inspected on the date and at the time specified by Seller, Seller warrants to Buyer that Seller shall exercise its best efforts to have all legitimate defects or damages listed by Buyer on the inspection sheet furnished by Seller corrected by the Seller's general contractor within a reasonable time thereafter. This warranty (called "Seller's Limited Warranty") shall survive the closing. Seller's Limited Warranty is conditioned on Buyer's full cooperation in making the inspection pursuant to Seller's inspection program. See Section 4.2 of the Deposit Receipt and Sales Contract.

c. Contractor's Warranty. The Seller will enter into an agreement with the general contractor for the Project whereby the general contractor will agree to provide, for the benefit of the Seller, the Buyer and the Association, the customary AIA warranty to correct any defects in workmanship or materials of which general contractor or Seller shall have received notice from Buyer within one (1) year after the date of substantial completion of the work (as such terms are defined in the construction contract) (called the "Contractor's Warranty"). The Seller does not make this warranty but merely passes on the Contractor's Warranty to the Buyer and the Association. The Seller's obligations with respect to any defects (other than those listed on the inspection sheet described in Section b. above) will be limited to assisting the Association or Buyer in presenting to the general contractor any claims based on such warranty; it being understood that such Contractor's Warranty is limited to defects reported in writing to the Seller or contractor within the first year following the date of substantial completion of the work. In the event of the breach of any of the subcontractors', suppliers' or manufacturers' warranties, Buyer shall have no claim against Seller on account of such breach, but Buyer's sole remedy shall be against such subcontractors, suppliers and manufacturers.

d. The Condominium Map Is Not a Warranty. The Condominium Map for the Project is intended to show only the layout, location, apartment numbers and dimensions of the apartments in the Project. BUYER AGREES THAT THE CONDOMINIUM MAP IS NOT INTENDED TO BE AND IS NOT A WARRANTY OR PROMISE OF ANY KIND BY SELLER.

e. Seller Makes No Warranties. Except for the Seller's obligations under the Seller's Limited Warranty, Buyer acknowledges that (i) Seller makes no warranties express or implied with regard to the Apartment being purchased by the Buyer or any other part of the Project nor shall Seller have any liability whatsoever to the Buyer or the Association for any Apartment or other Project defects or omissions; (ii) in the event of any dispute or litigation between (A) the Buyer and/or the Association or (B) the Buyer

and/or the Association and the Contractor and/or any subcontractor, supplier, or manufacturer who supplied materials, goods or services to or for the Project concerning any defects or omissions, the language of this paragraph e. may be presented or pleaded by Seller as a complete defense to any such dispute or litigation entitling Seller to an immediate exoneration in and dismissal from such dispute or litigation; and (iii) Buyer's and/or the Association's sole remedy for such defects or omissions shall be against the contractor, subcontractor(s), supplier(s), and manufacturer(s) as the case may be.

4. BREAKDOWN OF ANNUAL MAINTENANCE CHARGES AND ESTIMATED COSTS FOR EACH APARTMENT:

Attached to this Disclosure Abstract as Exhibit "1" is a breakdown of the annual maintenance charges and the monthly estimated cost for each Apartment in the Project, prepared by the Project Manager for the one-year period commencing January 1, 2002, and certified to have been based on generally accepted accounting principles. The attached breakdown of annual maintenance charges and the estimated cost for each Apartment are subject to change based on actual costs of the items listed. The Developer can make no assurances regarding the estimated maintenance assessments. Variables such as inflation, uninsured casualty loss or damage, increased or decreased services from those contemplated by the Project Manager, Apartment owner delinquencies and other factors may cause the maintenance assessments to be greater or less than the estimated maintenance assessments. The breakdown of the estimated cost for each Apartment contained in this Disclosure Abstract does not include the Buyer's obligation for real property taxes and does not include or otherwise take into account the one-time "start-up" fee required to be paid in addition to the normal maintenance charges. Estimates of the real property taxes will be provided by the Developer upon request.

\*\*\*\*\*  
\* NOTE: THE DEVELOPER ADVISES THAT COSTS AND EXPENSES OF MAINTENANCE \*  
\* AND OPERATION OF A CONDOMINIUM PROJECT ARE VERY DIFFICULT TO ESTIMATE \*  
\* INITIALLY AND EVEN IF SUCH MAINTENANCE CHARGES HAVE BEEN ACCURATELY \*  
\* ESTIMATED, SUCH CHARGES WILL TEND TO INCREASE IN AN INFLATIONARY \*  
\* ECONOMY AND AS THE IMPROVEMENTS AGE. MAINTENANCE CHARGES CAN \*  
\* VARY DEPENDING ON SERVICES DESIRED BY APARTMENT OWNERS. THE BUYER \*  
\* SHOULD EXAMINE THE MAINTENANCE CHARGE SCHEDULE TO SEE WHAT \*  
\* SERVICES ARE INCLUDED IN THE SCHEDULE. \*  
\*\*\*\*\*

EXHIBIT "1"

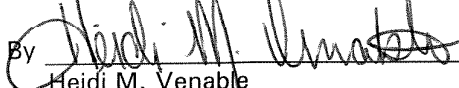
Nā Hale O Mākena

Estimate of Maintenance Fee Disbursements:

	<u>Monthly</u> x 12 months =	<u>Yearly Total</u>
Utilities and Services		
Electricity (common area only)	\$4,950 x 12 =	\$59,400
Refuse	\$650 x 12 =	\$ 7,800
Water	\$1,650 x 12 =	\$19,800
Sewer	\$890 x 12 =	\$10,680
Gas	\$800 x 12 =	\$ 9,600
Maintenance, Repairs and Suppliers		
Buildings	\$4,705 x 12 =	\$56,460
Grounds	\$9,325 x 12 =	\$111,900
Management		
Management Fee	\$1,200 x 12 =	\$14,400
Payroll and Payroll Taxes	\$11,890 x 12 =	\$142,680
Office Expenses	\$542 x 12 =	\$ 6,504
Insurance	\$2,220 x 12 =	\$26,640
Reserves (*)	\$2,355 x 12 =	\$28,260
Taxes and Government Assessments		
Audit Fees	\$370 x 12 =	\$ 4,440
Other		
TOTAL	\$41,547 x 12 =	\$498,564

I, Heidi M. Venable, Residential Manager Department Head of Prudential Iwado Realty, Inc. (a Hawaii corporation authorized to act as a managing agent in the State of Hawaii pursuant to Hawaii Revised Statutes Section 514A-95), as agent for the developer for the Nā Hale O Mākena condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

Prudential Iwado Realty, Inc.

By   
 Heidi M. Venable  
 Residential Manager Department Head

Date 8/13/01

(\*) Pursuant to §514A-83.6, HRS a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

Common Interest and Estimated Common Expense

<u>Apartment No.</u>	<u>Common Interest</u>	<u>Estimated Common Expense</u>	
		<u>Monthly</u>	<u>Annually</u>
A-301	3%	\$1,246.41	\$14,956.92
A-302	3%	\$1,246.41	\$14,956.92
B-401	3%	\$1,246.41	\$14,956.92
C-401	3%	\$1,246.41	\$14,956.92
D-301	3%	\$1,246.41	\$14,956.92
E-301	3%	\$1,246.41	\$14,956.92
F-301	3%	\$1,246.41	\$14,956.92
F-302	3%	\$1,246.41	\$14,956.92
B-402	3%	\$1,246.41	\$14,956.92
C-402	3%	\$1,246.41	\$14,956.92
D-302	3%	\$1,246.41	\$14,956.92
E-302	3%	\$1,246.41	\$14,956.92
A-201	2.575%	\$1,069.83	\$12,837.96
A-202	2.575%	\$1,069.83	\$12,837.96
B-201	2.575%	\$1,069.83	\$12,837.96
B-301	2.575%	\$1,069.83	\$12,837.96
C-201	2.575%	\$1,069.83	\$12,837.96
C-301	2.575%	\$1,069.83	\$12,837.96
D-201	2.575%	\$1,069.83	\$12,837.96
E-201	2.575%	\$1,069.83	\$12,837.96
F-201	2.575%	\$1,069.83	\$12,837.96
F-202	2.575%	\$1,069.83	\$12,837.96
B-202	2.575%	\$1,069.83	\$12,837.96
B-302	2.575%	\$1,069.83	\$12,837.96
C-202	2.575%	\$1,069.83	\$12,837.96
C-302	2.575%	\$1,069.83	\$12,837.96
D-202	2.575%	\$1,069.83	\$12,837.96
E-202	2.575%	\$1,069.83	\$12,837.96
A-101	1.9%	\$ 789.40	\$ 9,472.80
B-101	1.9%	\$ 789.40	\$ 9,472.80
C-101	1.9%	\$ 789.40	\$ 9,472.80
D-101	1.9%	\$ 789.40	\$ 9,472.80
E-101	1.9%	\$ 789.40	\$ 9,472.80
F-101	1.9%	\$ 789.40	\$ 9,472.80
F-102	1.9%	\$ 789.40	\$ 9,472.80
A-102	1.9%	\$ 789.40	\$ 9,472.80
B-102	1.9%	\$ 789.40	\$ 9,472.80
C-102	1.9%	\$ 789.40	\$ 9,472.80
D-102	1.9%	\$ 789.40	\$ 9,472.80
E-102	1.9%	\$ 789.40	\$ 9,472.80

CONDOMINIUM PUBLIC REPORT ON  
Nā Hale O Mākena

EXHIBIT I

SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT

A specimen Deposit Receipt and Sales Contract (the "Sales Agreement"), has been submitted to the Real Estate Commission and is available in the Sales Office of the Developer ("Seller"). ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ THE SALES AGREEMENT IN FULL, since this summary is NOT A COMPLETE DESCRIPTION of its provisions. The Sales Agreement, among other things, covers in more detail the following items:

1. Seller has given to and/or may give to one or more lenders a mortgage or mortgages, security agreement or agreements, and other instruments securing repayment of loan(s) and covering Seller's ownership rights in the Project, including the individual Apartments. All of the rights and interests which Seller gives to the lender or lenders will have priority over the buyers' rights and interests under the Sales Agreements. This applies to any changes in the loan or loans or the mortgage or mortgages, security agreement or agreements or other instruments (including, among other things, extensions, renewals and other changes). The buyers give up and subordinate the priority of their rights and interests under the Sales Agreements in favor of the rights and interests of Seller's lenders until the final closing and delivery of signed apartment deeds to the buyers. If Seller's lender or lenders ask the buyers to do so, the buyers will sign other documents to confirm the promises and agreements mentioned above.

2. Seller may (but does not have to) cancel the Sales Agreement (a) if the buyer's mortgage loan application is rejected or not approved within 45 days after application, or (b) if the buyer plans to pay the purchase price in cash but Seller is not satisfied for any reason with the buyer's ability to make the cash payments.

3. The limited warranties are set forth. These are described in Exhibit H (Disclosure Abstract) to this Public Report.

4. BUYER AGREES THAT NO ONE (INCLUDING THE SELLER OR ANY SALESPERSON) HAS REPRESENTED TO BUYER AT ALL ABOUT ANY RENTAL INCOME OR RENTAL OR SALES SERVICES FOR BUYER'S APARTMENT. IF BUYER WANTS TO RENT OR SELL THE APARTMENT, HOW BUYER DOES IT WILL BE UP TO BUYER SUBJECT TO THE RESTRICTIONS CONTAINED HEREIN AND IN THE DECLARATION, THE BY-LAWS, AND ANY OTHER DOCUMENTS AFFECTING THE PROPERTY. BUYER ALSO AGREES THAT NO ONE HAS TALKED TO BUYER AT ALL ABOUT INCOME FROM THE APARTMENT OR ANY OTHER ECONOMIC BENEFIT TO BE DERIVED FROM THE PURCHASE OR OWNERSHIP OF THE APARTMENT OR ABOUT THE TAX EFFECTS OF BUYING THE APARTMENT.

5. Buyer will pay for the following closing costs: 50% of the Escrow fee, all Buyer's notary fees, all appraisal fees, all recording costs (except for documents to clear Seller's title), all charges for buyer's credit report, all costs of preparing any mortgages and promissory notes, and 40% of the standard coverage title insurance premium. Buyer will also pay all mortgage costs. Buyer will also pay a nonrefundable start-up fee, (equal to one month's estimated common expense), which will be held and used by the Seller and the first Managing Agent of the Association as a working capital fund for the benefit of all the apartment owners. Buyer agrees that Seller does not have to pay any start-up fee for any Apartment in the Project, but Seller will cause all buyers to pay the start-up fee when Apartments are sold and closed in escrow. Proration of maintenance charges and other common expenses, and real property taxes will be made as of the scheduled Closing Date.

6. If Buyer fails to make any payment when it is due or fails to keep any of buyer's other promises or agreements contained in the Sales Agreement, then Seller will have the right, at Seller's sole option and in addition to any other rights contained in the Sales Agreement, to do any one or more of the following:

(a) Seller may cancel the Sales Agreement by giving buyer written notice of cancellation and Seller may keep all sums paid by buyer under the Sales Agreement as liquidated damages. If Seller cancels the Sales Agreement, Buyer agrees that it will be difficult and expensive to determine the amount of loss or damage Seller will suffer. This is because of, among other things, Seller's commitments relating to the financing of the Project, the effect of default and cancellation of one sale on other apartment sales, and the nature of the real estate market in Hawaii. Buyer agrees that the sums paid by buyer under the Sales Agreement are a reasonable estimate of a fair payment to Seller for Seller's loss or damage resulting from buyer's default.

(b) Seller may file a lawsuit for damages.

(c) Seller may file a lawsuit for "specific performance" (in other words, a lawsuit to make buyer keep all of buyer's promises and agreements, including, without limitation, closing the purchase of the Property).

(d) Seller may take advantage of any other rights which the law allows or which Seller may have under the Sales Agreement.

Buyer also agrees to pay for all costs, including Seller's reasonable lawyers' fees (for both in-house and outside counsel) and the escrow cancellation fee, which are incurred because of buyer's default.

7. If Seller fails to keep any of Seller's promises or agreements contained in the Sales Agreement, Buyer may require Seller to go through with the Sales Agreement, or Buyer may cancel the Sales Agreement. If Buyer cancels the Sales Agreement because

of Seller's default, Seller will repay to Buyer all sums paid by Buyer to Seller or Escrow under the Sales Agreement, without interest (unless Buyer is entitled to the interest pursuant to Section 2.1 of Exhibit A of the Sales Agreement).

BUYER AGREES THAT IF SELLER DEFAULTS UNDER THE SALES AGREEMENT AT ANY TIME, BUYER WILL ONLY HAVE THE RIGHTS MENTIONED IN THIS SECTION. BUYER GIVES UP ANY OTHER RIGHTS BUYER MIGHT OTHERWISE HAVE.

8. The Buyer acknowledges and agrees to the following:

(a) Utility Effects. The Project is or may be located adjacent to or in the vicinity of electric, water and other utilities and public roads and thoroughfares, including, without limitation, such things as water pump stations, water tanks, sewer pump stations and reservoirs which may result in nuisances, such as noise and dust, disturbances or hazards (collectively, the "Utility Effects") to persons and to property within the Project. Seller does not insure or guarantee the health of Buyer or other occupants or users of the Project and disclaims liability for personal injury, illness or any other loss or damage caused by or arising from the Utility Effects including, without limitation, the presence or malfunction of any utility distribution systems that may be located adjacent to, near, or over any part of the Project;

(b) Development Effects. The Project is or may be located adjacent to or in the vicinity of other development phases and various construction activities, including, but not limited to, ongoing residential or commercial and related construction, proposed construction of future residential subdivisions and commercial facilities and roads, utility services, land development activities and other construction and development projects by Seller or third parties (collectively, the "Development"). Construction of any Development will or may result in noise, dust, vibration, blasting and other nuisances, disturbances or hazards to Buyer and to persons and property on or within the Project, and may inconvenience Buyer's access to the Project. When completed, traffic, lights, noise, dust, vibration and other nuisances, disturbances or hazards to persons and property on or within the Project may be generated from the Development. No representations or warranties are made by Seller or its respective employees or agents concerning plans, or the absence of plans with respect to future development of adjacent or nearby properties, and any plans for the future development of adjacent and nearby properties by Seller or others are subject to change in the sole and absolute discretion of the Seller or others, including, without limitation, changes in the type, location and quality of any development to occur. Seller makes no representations regarding the view from the Apartment or the Project or any view easements or rights; and the views are not guaranteed and may be altered, blocked or impaired by the future development of adjacent or surrounding properties. All of the effects described in this paragraph (b) are hereinafter collectively called the "Development Effects"); and

(c) Waiver, Release and Indemnity. Buyer represents and warrants to Seller that Buyer, in Buyer's sole discretion, has determined that the benefits of owning

and enjoying the Apartment outweigh the risks of the Utility Effects and the Development Effects (collectively, the "Property Conditions"). Buyer hereby irrevocably agrees to suffer and permit all actions and consequences incidental to the Property Conditions. Buyer hereby covenants and agrees to assume all risks of impairment of Buyer's use and enjoyment of the Apartment and the Project, loss of market value of the Apartment, and property damage or personal injury arising from the Property Conditions, and Buyer, for the Buyer and the Buyer's tenants, lessees, family, servants, guests, invitees, licensees, agents, employees, and those who use the Project through the Buyer for any period of time (collectively, the "Occupants"), hereby waives any claims or rights of action or suits against Seller, its successors and assigns, arising from such impairment of the Occupants' use and enjoyment of the Apartment or the Project, loss of market value of said property, and property damage or personal injury arising from one or more of the Property Conditions. Buyer further covenants that Buyer will notify all Occupants and transferees of the Apartment of the risks of the Property Conditions.

9. Buyer understands and agrees that (i) Seller's obligation to provide landscaping within the common elements of the Project will be deemed fully satisfied upon planting of the plant materials (which need not be in full coverage and maturity) and installation of the irrigation system pursuant to Seller's landscaping plans, as the same may be amended from time to time in Seller's sole discretion; (ii) installation of the plant materials and irrigation system may be completed after the Closing Date; (iii) full maturity of the plant materials will only be reached over an extended period of time and Seller is not responsible for providing landscaping maintenance to reach full coverage and maturity; and (iv) the association of apartment owners of the Project will be responsible for maintaining the landscaping after installation thereof, even if the landscaping has not reached full coverage or maturity.

10. If, because of the enactment or amendment of any law, or due to any fire, earthquake, act of God, the elements, war, civil disturbances, strike or other labor disturbance, or economic controls making it impossible to obtain the necessary labor or materials, or any other event, matters or conditions beyond the control of Seller, including any litigation or threat of litigation concerning the Project or any significant increase in Seller's construction cost or other projected Project costs (such as the amount of interest payable under Seller's construction loan), Seller determines that:

(i) such conditions prevent or unduly restrict the construction of the Project, then Seller shall have the right to rescind this contract. Upon the rescission of this contract pursuant to the foregoing provision, Buyer shall be entitled to a refund of all moneys paid hereunder together with any interest as provided in Section 2.2. of the Sales Agreement. The parties shall then be released from all obligations and liability hereunder;

(ii) such conditions have resulted in or will result in increases in development and construction costs, then Seller may increase the Purchase Price for the Apartment by an amount not in excess of the Apartment's



proportionate share (based, approximately, on the Seller's price list for all Apartments in effect at the time of the Preliminary Public Report) of the total amount of such increases in development costs, and Buyer hereby acknowledges that this contract will be deemed to be amended to incorporate the increased Purchase Price upon Seller's giving notice to Buyer of the amount of the increased Purchase Price, and Buyer shall be deemed to have approved and accepted this contract, as amended, and hereby agrees to pay such increased Purchase Price; provided, however, upon receipt of the notice from the Seller of the amount of the increased Purchase Price, Buyer shall have thirty (30) days from the date of the notice to cancel this contract by written notice to Seller and upon such notice to receive a refund of deposits together with interest as provided in Section 2.2. of the Sales Contract.

11. The buyer agrees that buyer may not transfer the Sales Agreement or any of buyer's rights or interests under the Sales Agreement without first getting Seller's written consent (which Seller may withhold in its sole and absolute discretion).

NOTE: ALL BUYERS SHOULD READ THE SALES AGREEMENT IN FULL AS THIS SUMMARY IS NOT ALL-INCLUSIVE AND DOES NOT CONTAIN A COMPLETE DESCRIPTION OF ALL PROVISIONS OF THE SALES AGREEMENT. THIS SUMMARY IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF SOME OF THE ITEMS CONTAINED IN THE SALES AGREEMENT, AND DOES NOT ALTER OR AMEND THE SALES AGREEMENT IN ANY MANNER.

## EXHIBIT J

### SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a Buyer makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the Buyer know when payments are due.
- (b) Escrow will arrange for the Buyer to sign all necessary documents.
- (c) The Buyer will be entitled to a refund of his or her funds only under certain circumstances as set forth in the Sales Contract.
- (d) After a Sales Contract becomes final and binding after the issuance of the Final Public Report for the Project, Developer may withdraw Buyer's deposits to pay for Project construction costs.

The Escrow Agreement also establishes the procedures for the retention and disbursement of a purchaser's funds and says what will happen to the funds upon a default under the Sales Contract. The Escrow Agreement contains various other important provisions and establishes certain charges with which a buyer should be familiar. It is incumbent upon buyers and prospective buyers to read with care the executed Escrow Agreement on file with the Real Estate Commission.